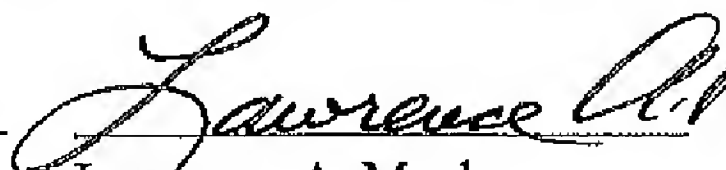


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Stephan BLICKER et al.)	Certificate of Transmission/Mailing
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Examiner: Ankur JAIN)	22313-1450, on the date shown below:
)	
Confirmation No.: 9949)	<u>02/16/11</u> 
)	Date
Attorney Docket No.: 0740-78)	Lawrence A. Maxham
)	Registration No. 24,483
)	Attorney for Applicant(s)

Mailstop: PETITION
Commissioner for Patents
P.O. Box 1450
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REQUEST FOR A DIFFERENT EXAMINER

On 16 April 2008 an Official Action issued in which the then active claims were rejected as obvious over Maggenti in view of Crocker and Bensimon. An Amendment was filed on 2 July 2008, with claim amendments and full arguments to distinguish the claims from the cited references.

A second Official Action (Final) was issued on 20 October 2008, with the wording employed in rejecting the claims still pending that were previously pending being *identical* with the wording in the 16 April 2008 Official Action. Claims 9, 15, and 16 were newly considered, but all were rejected on the same three-reference combination.

A telephonic interview was held on 15 January 2009 between Mr. Callan on behalf of Applicants and Examiner Jain. An expanded argument with minimal claim amendments was filed on 20 January 2009, together with an RCE.

On 29 January 2009, Examiner Jain issued a third Official Action, relying on only Meggenti and Bensimon in rejecting the claims as obvious. Mr. Jain was now able to find limitations in Maggenti for which he previously relied on Crocker, now discarded.

Applicant's arguments distinguishing Maggenti and Bensimon were completely ignored "in view of the new ground(s) of rejection."

A telephonic interview with Examiner Jain was held on 8 May 2009 with Attorney Callan and the arguments made to distinguish the primary reference, Maggenti, were reiterated and enhanced in the response filed on 28 May 2009. Substantial claim changes were also made. Specifically, Applicants argued that the disclosure of Maggenti had been stretched beyond rationality under the rubric of "broadest reasonable interpretation." Applicants forcefully and explicably argued that Maggenti teaches away from the limitations in the independent claims, and that Mr. Jain's interpretations of Meggenti were not reasonable under MPEP 2111.

On 13 August 2009, a fourth Official Action was issued (Final). Except for addressing new limitations in the claims, Mr. Jain's rejection language is all but identical to that used in the prior Official Action. In his "Response to Arguments," Mr. Jain essentially employed the same language as he did in the rejection several pages earlier and never addressed the seminal arguments concerning his unreasonable stretching of the Maggenti reference.

On 23 November 2009, after realizing that Examiner Jain's August 2009 Official Action was not in any way responsive to the arguments made in the 28 May 2009 Amendment, and after an attempt to reach Mr. Jain 17 November 2009 was unsuccessful, Mr. Callan called Mr. Jain's supervisor. Mr. Pan said he would talk with Mr. Jain the next week. As of 30 November 2009, Mr. Jain's supervisor had suggested claim changes, but a new Official Action, responding to Applicants' arguments previously advanced, was requested.

On 1 December 2009, Mr. Jain called Mr. Callan and promised to prepare a new Official Action in which he would respond fully to the arguments strongly advanced in the 28 May 2009 Amendment. Mr. Callan at that time requested that Mr. Jain interpret the term "operator" in a manner that is not inconsistent with the specification of the pending application. No Interview Summary Record was received from Mr. Jain.

Assuming Mr. Jain would perform as he promised, we waited. A Notice of Abandonment was issued on 7 May 2010.

The undersigned attorney called Examiner Jain on 13 May 2010. Mr. Jain stated that he would withdraw the current Official Action to relieve the state of abandonment

and issue a new Official Action. Six weeks expired and Mr. Jain did not follow through.

On 22 June 2010, the undersigned attorney called Supervisor Pan and left a detailed message. Mr. Pan never called back.

On 4 August 2010, the undersigned attorney called Supervisor Pan and again left a message.

On 4 August 2010, Mr. Jain called back, asking for Mr. Callan, even though the last three calls to Mr. Jain and Mr. Pan were clearly from Mr. Maxham. Mr. Jain said a new Official Action would be sent "this week."

On 5 August 2010, there were four separate telephone calls. Mr. Jain stated that we had to go through with a Petition because the Office could not correct its own series of mistakes without Applicants preparing and filing costly and time consuming requests that it do so.


Attached to the petition dismissal of 14 January 2011 is an "advisory action" signed by Mr. Pan, Mr. Jain's supervisor. While the advisory action states that Applicant's (sic) argument of 15 November 2010 "have been fully considered," the body of that text is a direct copy of Mr. Jain's wording from the wholly inadequate Official Action of 13 August 2009.

Examiner Jain's lack of following through as he promised has now unnecessarily cost Applicants thousands of dollars and as much as two years of wasted time in its attempt to obtain a patent to which it is entitled, considering the inadequacy of the applied prior art. Applicants deserve to have a proper prosecution and an examiner who agrees to perform as any applicant can reasonably expect.

Respectfully submitted,

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